

In the United States Court of Appeals  
for the Ninth Circuit

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ESTATE OF WALLACE CASWELL, DECEASED; JENNIE J.  
CASWELL, ADMINISTRATRIX, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

*and*

ESTATE OF CHARLES HENRY CASWELL, DECEASED; EARL  
W. CASWELL, ADMINISTRATOR, PETITIONER

*v.*

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

---

ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX  
COURT OF THE UNITED STATES

---

BRIEF FOR THE RESPONDENT

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OPINION BELOW

The opinion of the Tax Court (R. 20-39) is reported  
at 17 T.C. 1190.

JURISDICTION

These petitions<sup>1</sup> for review (R. 60-65) involve de-  
ficiencies in federal income taxes for 1945 of \$7,828.97

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<sup>1</sup> On motion of the taxpayers these cases have been consolidated  
for briefing and hearing. Since the issues are the same in both  
cases, only the record in Estate of Wallace Caswell has been printed.  
(R. 69-71.)

in the Estate of Wallace Caswell (R. 40) and of \$5,278.10 for the year 1945 for the Estate of Charles Henry Caswell (R. 41). On December 5, 1949, the Commissioner mailed to the taxpayers notices of deficiency. (R. 9-16). Within 90 days thereafter and on February 27, 1950, the taxpayers filed petitions with the Tax Court for a redetermination of the deficiencies under the provisions of Section 272 of the Internal Revenue Code. (R. 5-16.) The decisions of the Tax Court sustaining the deficiencies were entered May 5, 1952. (R. 40-41.) The cases are brought to this Court by petitions for review filed August 4, 1952 (R. 60-65), pursuant to the provisions of Section 1141 (a) of the Internal Revenue Code, as amended by Section 36 of the Act of June 25, 1948.

#### QUESTION PRESENTED

Whether the Tax Court erred in holding that the transferable interest-bearing certificates issued to taxpayer-members of a co-operative growers association representing their interest in the capital reserve of the association constituted income to the taxpayer-recipients to the extent of the face value of the certificates.

#### STATUTE AND REGULATIONS INVOLVED

The applicable provisions of the statute and Regulations involved are set forth in the Appendix, *infra*.

#### STATEMENT

In the Tax Court the facts were stipulated and were found as stipulated. (R. 22.) The facts as appearing in the Tax Court's opinion (R. 20-39) may be summarized as follows:

Wallace Caswell, until his death on December 3, 1949, and for the years material hereto, was a resident of

Ceres, California. He filed his income tax return for the taxable year 1945 with the Collector of Internal Revenue for the First District of California. After his death, his wife, Jennie J. Caswell, was duly appointed and qualified as administratrix for her husband's estate. In the year 1945, Wallace Caswell filed his return on a cash receipts and disbursements basis and reported all income as the community income of himself and wife, to whom he was married at all times material hereto. (R. 22.)

Charles Henry Caswell, until his death on June 26, 1949, and for the years material hereto, was a resident of Ceres, California. He filed his income tax return for the taxable year 1945 with the Collector of Internal Revenue for the First District of California. After his death, Earl W. Caswell was duly appointed and qualified as administrator of the estate of Charles Henry Caswell, deceased. In the year 1945, Charles Henry Caswell filed his return on the cash receipts and disbursements basis and reported all income as community income of himself and wife, Helen C. Caswell, to whom he was married at all times material hereto. (R. 22.)

Wallace and Charles Henry Caswell each had a one-half interest in the partnership, Caswell Brothers, of Ceres, California. This partnership was engaged in growing peaches which it marketed through the Turlock Co-operative Growers Association of which it was a member. (R. 22-23.)

The Turlock Co-operative Growers Association, sometimes referred to herein as the Co-op, or Turlock, is a California farmers' co-operative marketing association located at Modesto, California. During 1945,

and so far as appears during all other years, Turlock was exempt from income tax under Section 101 of the Internal Revenue Code. (R. 23.)

The Co-op conducted business with its members pursuant to a crop contract. The contract in form was a contract of purchase. It covered all of the crop or crops to be produced for designated years on specified land. "Terms and Condition" 4, 5 and 6 were as follows (R. 23-24):

4. The association shall pool the commodities of the Grower with commodities of like kind, grade and classification purchased by the Association under contracts similar to this, and the price to be paid to the Grower therefor shall be based on the average price per pound at which all commodities of like kind, grade and classification shall have been sold by the Association.

5. The Association, if market and financial conditions in its judgment justify, may make advances on account of payment on the commodities purchased by it hereunder, the amount of such advances being based on market and financial conditions and the quality of the commodities.

6. The Association agrees to sell said commodities in bulk in its natural state as delivered, or at its option, to can, preserve, manufacture, process and pack said commodities, or to procure the same to be done, and thereafter sell the same as rapidly as possible and pay the proceeds over to the Grower, named in this and similar contracts, first deducting any advances made the Grower, and each Grower's pro rata share of the cost of receiving, handling, manufacturing, canning, storing, selling, advertising, and other expenses of the Association,



and an Association charge, to and in such an amount as shall be determined by the Board of Directors of the Association. From this Association charge, organization and other general Association expenses shall be deducted, and with the balance a commercial reserve shall be created.

Whenever any commercial reserve is no longer needed for Association purposes, the Association shall distribute it among the Growers in the proportions to which they are entitled, determined on the basis of the amount retained from each Grower to create such a reserve.

By Section 3 of Article XII of Turlock's by-laws it was provided that a non-assignable certificate of membership should be issued to each member who has signed a marketing agreement in the required form. By Section 5 it was provided that each member should have one vote. A membership fee of \$10 was payable under Section 8 and the fees so paid were to be retained as a membership fund in cash or in specified assets and by Section 6 it was provided that the property rights and interest of the members in the membership fund so established should be equal, each member having "one unit of property right and interest." All other rights, interests and participations were to be according to the patronage or participation of the member in the crop marketing program. (R. 24-25.)

The association charge which under provision 6 of the crop contract was to be deducted by the Co-op when making payment to the member for his crop was covered by Section 9 of Article XII of the by-laws and reads as follows (R. 25):

From the Association charge provided for in the marketing agreement, organization and other gen-

eral association expenses shall be deducted and commercial reserves created, and deductions made for the interest on or retirement of the advance fund in the discretion of the Association.

During the taxable year and up to March 8, 1949, the provision of the by-laws covering the creation and maintenance of the commercial reserve also dealt with in provision 6 of the marketing contract was as follows (R. 25-26) :

The association shall create and maintain a commercial reserve. This reserve shall be deducted from the Association charge and shall be used to purchase necessary equipment and property, to provide working capital and for other uses of the Association, including the purchase of stock of any corporation organized for the purpose among other things of manufacturing or selling the products of this Association, and with whom this Association shall contract for the manufacturing of such products.

Certificates shall be issued bearing interest at the rate of six per cent per annum for and on account of the respective interest herein of the members of the Association. If the members do not elect to continue co-operative marketing to the end of the period provided in the marketing agreement, the directors shall sell the assets of the Association, and after deducting and retaining the entire membership fund for distribution equal to memberships, shall distribute the proceeds proportionately to the owners of the certificates then unredeemed.

During 1945, Turlock issued to the partnership, Caswell Brothers, two certificates "for and on account of"

its interest in the Commercial Reserve Fund. Certificate 1110 in the amount of \$2,731.86 was issued February 1, 1945, and was for the 1943 crop. Certificate 1229 in the amount of \$4,389.92 was for the 1944 crop. Up to the date of the trial herein neither certificate had been redeemed. (R. 26.) The certificates bore interest at 6 percent per annum and in form were as follows (R. 27-28):

Incorporated March 2, 1929

Turlock Co-operative Growers

An Incorporated Co-operative Association  
Organized Under the Laws of the  
State of California.

This Certifies That ——— is the owner of ——— Dollars of the Commercial Reserve Fund of the

Turlock Co-operative Growers

Said Commercial Reserve Fund and the interest therein represented by this

Commercial Reserve Fund Certificate

is subject to the provisions of the Articles of Incorporation and Bylaws of this Association and shall be distributed only in accordance with the provisions thereof.

Interest at the rate of ——— per annum shall be paid upon the face value represented by this certificate from date first issued, until called for redemption.

This certificate is transferable upon the books of the Association by the owner or by duly author-

ized agent upon surrender of this certificate properly endorsed.

Series ———.

Date first issued ———.

Witness the seal of the Association and the signatures of its duly authorized officers.

Date ———.

—————, *President.*

—————, *Secretary-Treasurer.*

Wallace Caswell, as an individual, was also a member of Turlock, and during 1945 three certificates were issued to him reflecting his interest in the Commercial Reserve Fund. Certificate 1111 in the amount of \$140.38 and Certificate 1112 in the amount of \$789.72 were issued on February 1, 1945, and were for the 1943 crop. Certificate 1230 in the amount of \$1,418.82 was issued on November 1, 1945, and was for the 1944 crop. Up to the date of the trial herein none of these certificates had been redeemed. These certificates bore 6 percent interest per annum and were in the form set out above. (R. 28.)

The Co-op operates on the basis of a fiscal year ending January 31. (R. 28.) Its balance sheet as of January 31, 1946, appears in the Record (pp. 29-31).

Turlock renders a financial statement to each of its members at the end of each of its fiscal years but the statement given to members is not broken down into details to the extent shown in its balance sheet. (R. 32.)

During a crop year but before harvesting, the Co-op makes advances to its members. When the crop is har-

vested and delivered to it, the Co-op pays its members in cash as it in turn sells the crop or goods canned from the crop, after deducting for the advances made, less a percentage, usually at 10 percent, which is withheld by the Co-op and which ultimately is represented by the issuance of certificates. Upon receipt by the Co-op, the crop produced by a member is mixed with similar crops produced by other members and becomes part of one of the pools for that year. As these pools are liquidated by the Co-op, the above-mentioned payments are made. After a pool is liquidated to the extent of 90 percent or 95 percent, the pool is closed and certificates are issued for the amounts withheld plus an estimated 10 percent of the sales price on the remaining 5 percent or 10 percent of the pool unsold at the time of closing. This unsold portion of the pool is carried over to following years and sold without burden of any further expense, the actual expenses of sale being carried entirely by the current year pools. (R. 32.)

At the conclusion of the distribution of each commodity pool, a statement is rendered to each of the growers showing the total amount received for the commodity marketed, less any charges that might have been made to him, also less the Reserve Fund Certificate which up to this time had been issued on the basis of 10 percent of the net return of the commodity marketed. (R. 32-33.)

The Co-op, from time to time, purchases certain quantities of raw materials from non-members in order to complete pack orders with respect to certain commodities, but the quantities so purchased are small in comparison to the materials supplied by the grower members. (R. 33.)

If the financial condition of the Co-op is such that the board of directors concludes that a redemption can be made of outstanding certificates, a call is made for the oldest outstanding certificates. Prior to the amendment of Article XIII of the association's by-laws in 1949, certificates were issued and redeemed on the basis of their individual dates of issuance; the amendment requires that they now be issued and redeemed in yearly series. For all times material hereto, the Co-op has paid those certificates which it redeemed on the basis of 100 cents on the dollar. In 1941 the Co-op redeemed the certificates which it issued in 1935 and 1936, and a portion of those issued in 1937. In 1943 it redeemed the remainder of the certificates issued in 1937 and also those issued in 1938 and a portion of those issued in 1939. In 1944 it redeemed the remainder of the certificates issued in 1939 and all of those issued in 1940. In 1945 no certificates were redeemed. In 1946 the Co-op redeemed the certificates issued during the first eight months of 1941. In 1947 it redeemed the remainder of the certificates issued in 1941 and all of those issued in 1942. In 1948 it redeemed certificates issued during the first five months of 1943. No certificates have been redeemed since 1948. (R. 33-34.)

According to the books of Turlock six transfers of certificates were made in 1944 and thirteen in 1945. The circumstances, reasons or considerations for these transfers are not shown of record and do not appear on the books of the Co-op. (R. 34.)

Interest rates on the certificates are now fixed by the board of directors of the Co-op. Certificates issued currently carry interest at 3 percent, whereas earlier certificates, including those for the year 1945, carried an interest rate of 6 percent. (R. 34.)

In his determination of the deficiencies herein the Commissioner included in gross income the face amount of the certificates issued in the taxable year. In his notices of deficiency the amounts so included in gross income were shown as representing the fair market value of the certificates. (R. 35.)

#### SUMMARY OF ARGUMENT

### I

The certificates issued by the Co-op to the taxpayer-patrons in part payment for the crop sold by the Co-op was not an evidence of indebtedness as contended by taxpayers, but represents taxpayers' interest in the incorporated Co-op. For taxpayers' crop during the taxable year in question, the taxpayers were paid, pursuant to their agreement with the Co-op, partly in cash and partly in Co-op certificates representing taxpayers' pro rata share in the revolving capitalization fund maintained by the Co-op. The certificates bore interest at the rate of 6 percent which has always been paid, were transferable and several transfers have been recorded. The reputation and condition of the Co-op and management are good. The surplus retained in the Co-op's revolving fund equals the face amount of the outstanding certificates. The oldest outstanding certificates were being redeemed by the Co-op at face value without undue delay. It is evident therefore that the certificates evidenced taxpayers' equity in the Co-op.

In reality the certificates in the absence of evidence to the contrary are as a matter of law equal<sup>to</sup> face, the value to the Co-op and to the taxpayers being the same. But if the value of the certificates is a fact question as

treated by the Tax Court the decision, moreover, is correct since on these facts the certificates had a fair market value of face. Definitely the taxpayers by receipt of the certificates received and realized income in "property (other than money)" pursuant to the provisions of Section 111 (b) of the Internal Revenue Code. Moreover, the evidence substantiates the Commissioner's determination that the "property" received, the certificates, had a fair market value of face.

#### ARGUMENT

### **The Tax Court Did Not Err in Holding that Charles and Wallace Caswell Realized Income in 1945 upon Receipt of the Certificate Issued by the Turlock Co-operative Growers**

#### *A. Preliminary*

Wallace Caswell and Charles Henry Caswell (herein referred to as the taxpayers), both of whom are now deceased, were residents of Ceres, California. Both were engaged in farming operations, each operating a separate farm, and also operating certain farming property as a partnership under the name of Caswell Brothers. They filed their income tax returns for 1945 on a cash receipts and disbursements basis. (R. 22.) Wallace Caswell as an individual and the partnership, Caswell Brothers, both were members of a farmers' co-operative known as Turlock Co-operative Growers, and they marketed peaches through that organization. In 1945, the partnership received two certificates of the Turlock Co-operative Growers in the amounts of \$2,731.86 and \$4,389.92 which were issued respectively on the 1943 and 1944 crops of peaches supplied by the partnership. In 1945, there were issued to Wallace Caswell individually two certificates in the amounts



of \$140.38 and \$789.72 on his 1943 crops of peaches, and one certificate in the amount of \$1,418.82 on his 1944 crop. All of these certificates called for interest at the rate of 6 percent and were transferable. (R. 26, 28, 50.) The Commissioner determined, and the Tax Court held, that these certificates were includible in their 1945 income at the face value.

*B. The certificates represented the amount of the taxpayers' interest in the co-operative association*

Contrary to the argument of the taxpayers (Br. 7-10), the Commissioner contends that the findings of the Tax Court were consistent and in harmony with the facts as stipulated. It is meaningless to argue with the taxpayers concerning the rights of the holders of the certificates, whatever be the legal significance of the certificate. The question is whether, at the time of issue and receipt of the certificates, the taxpayers received taxable income.

The taxpayers argue that these certificates are not income to them because the certificates represent a debt owed them by the Co-op. (Br. 12, 13, 14.) But the Tax Court held that it made no difference "Whether the certificates received be likened to debentures or evidences of indebtedness or to shares of preferred stock or be said to evidence a more direct ownership of the designated amount of the commercial reserve," because "they were none the less securities evidencing valuable rights or interest in the commercial reserve which belonged to the Caswells \* \* \*." (R. 37-38.) Taxpayers' authority (I. T. 3342, 1940-1 Cum. Bull. 58) for the argument (Br. 13-14) that notes need not be included in the holder's income until paid is meaningless

since in that I. T. the "notes" were given in lieu of interest payments on debentures and were mere extensions of debenture interest payments, and, further, they had no fair market value.

The position of the Commissioner is that instead of being "certificates of indebtedness" as contended by the taxpayers, these certificates represent the taxpayers' equity in the Commercial Reserve Fund maintained by the Co-op, and are certificates of ownership in the nature of a callable preferred stock issued by a corporation. The face of the certificate makes it plain that it is issued by a corporation, that it contains no promise to pay, that it is a certificate of ownership, subject to be freely sold, exchanged, transferred or assigned, that it may be called for redemption by the corporation, and there is no promise that the face amount of the certificate will be paid. Although the certificate is worded in terms of ownership of the Commercial Reserve Fund of the Turlock Co-operative Growers, an examination of the balance sheet (R. 29-31) makes it clear that there is no "fund" in the sense of the accumulation of cash, but rather the certificates represent the owner's equity in the business. The balance sheet shows that the total of the assets at the end of the fiscal year ending January 31, 1946, was \$1,317,636.61, and this exceeded the total liabilities by \$570,599.25. This latter figure which represented the total of the equity of the members in the business, was derived from the membership fees in the amount of only \$760, and amounts retained from 1945 and prior pools in the amount of \$569,839.25. Thus it is clear that the substantial amounts retained in the pools (rather than the meager membership fees) in exchange for and

upon which the certificates were issued, provided the corporation with the capital on which it operated. Approximately the same condition is shown by the 1949 and 1950 balance sheets. (R. 59-60.) Indeed, Article XIII of the Co-operative corporation's by-laws as in effect in 1945 made it clear that the reserve was not maintained as a cash fund by specifically stating that it was to be used to "purchase necessary equipment and property" and "to provide working capital." (R. 26, 44.) In all respects but name, these certificates have all the characteristics of a callable preferred stock. Certainly the holder was the owner of an interest in a corporation and was not a creditor on an indebtedness due by it. There is absolutely no indication in the by-laws or contracts between the parties that these certificates were to be considered as evidence of indebtedness.

The Commercial Reserve Fund represents operating capital to this Co-op. This revolving fund method of financing is a means of maintaining adequate Co-op capitalization. When the taxpayers' rightful net proceeds for the year's crops were credited by the Co-op to its revolving capitalization fund and certificates issued, the taxpayers' legal position became that of an investor. In the final analysis, it matters not what name is given the certificates. As stated in Rumble, *Cooperatives and Income Taxes*, 13 *Law and Contemporary Problems* (1948), p. 546:

If the contract liability theory be applied and distributions in securities or to capital reserves be considered payment of the liability and a capital reinvestment by the patron, or if either the agency or fiduciary theory be applied, patronage refunds distributed to patrons on the basis of their business

with the cooperative, excluding earnings on the business of nonparticipating patrons, are not income of the cooperative within the meaning of the constitutional provision and cannot either be made such by constitutional fiat or be taxed as such by Congress.

If the certificate is evidence of the contributors' donating interest in the fund similar to an owner's interest in a corporation such as shareholders have, then certainly the amount of the patron's interest retained by the Co-op was income to the patron-contributor prior to or at the time of issuance of the certificate.

The Tax Court held that the actual receipt of the securities by the taxpayers represented taxpayers' interests in the Co-op (in the face amount) and constituted receipt of income to them on the cash basis in the face amount of the certificate. ~~The taxpayers received the certificates in the same year that the Co-op sold the crops.~~

The taxpayers chose to market their crops in such a manner that, instead of receiving the entire purchase price in cash, they received part of it in cash and part in transferable interest-bearing certificates representing an equity in the Co-op corporation. It is well settled that a taxpayer cannot defer the realization of income merely by receiving a portion of his sales price in property.

The Tax Court found, based on the provisions of Section 111 (b) of the Internal Revenue Code<sup>2</sup> and Sec-

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<sup>2</sup> Section 111 (b) of the Internal Revenue Code provides:

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

tion 29.22(a)-7 of Regulations 111<sup>3</sup> (both Appendix, *infra*), that the acquisition of the certificates represented a taxable gain to taxpayers in "property (other than money)" to the extent of the fair market value of the certificates and that the facts required a conclusion that the fair market value of the certificates amounted to face. The court considered the value of the certificates to be a question of fact. On this theory it is obvious that the certificates are property other than money, and accordingly are includible in the income of these cash basis taxpayers in the year in which they were received to the extent of their then fair market value. See *Brown v. Commissioner*, 69 F. 2d 863 (C.A. 5th), certiorari denied, 293 U.S. 579, wherein taxpayer sold timber for some cash and co-op stock, and it was held that the value of the co-op stock was includible in her income in the year it was received. See also Income Tax Information Release No. 2, April 13, 1950 (1950 C.C.H., par. 6111), wherein it is held that distributions of this type by farmers' co-operative marketing associations should be included in the gross income of the patrons to the same extent that such distributions would be includible if paid in cash.

It is accepted practice for farmers on the cash basis to expense the entire cost of raising their crops in the taxable year in which the crops were grown, so that any proceeds from a sale, whether in cash or property, constitute income to the full extent thereof, and are

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<sup>3</sup> Section 29.22(a)-7 of Regulations 111 provides:

A farmer reporting on the basis of receipts and disbursements (in which no inventory to determine profits is used) shall include in his gross income for the taxable year (1) the amount of cash or the value of merchandise or other property received during the taxable year from the sale of live stock and produce which were raised during the taxable year or prior years, \* \* \*

not a mere reimbursement for the cost of producing such crops.

It is submitted that if it can be shown that the certificates or other property received in lieu of cash has any value, *a fortiori*, it must constitute income to the recipient. Regulations 111, Section 29.111-1 (Appendix, *infra*) states that "only in rare and extraordinary cases" will such property be considered to have no fair market value, and "The fair market value of property is a question of fact." Where the certificates have some recognized value, whether they be notes, stock or otherwise, but the market value is not established or is speculative or is not subject to proof, the fair market value must be presumed to be face. See *Estate of Pratt v. Commissioner*, 7 B. T. A. 621, 624-625, and *Ballard v. Commissioner*, 25 B.T.A. 591, where the Commissioner's determination of value was approved in the absence of evidence. The denominational amount of the certificates at the time of issue is determined by the Co-op and patron pursuant to the actual market value of the crops sold by the Co-op. The "cost" of the certificates to the taxpayers was the equivalent of the peaches sold by the Co-op. Here the taxpayers did not show that the certificates had no fair market value, or that the certificates had a value less than face. On the contrary, the facts show that some market value must be attributed to the certificates.

Herein the record gives no indication that the fair market value of the certificates was less than face. The burden was clearly on the taxpayers to show that the certificate had no value or value other than face. To establish that value, evidence of book value is sufficient to establish a *prima facie* case which will become con-

clusive if contrary evidence is not introduced. *Keck Inv. Co. v. Commissioner*, 77 F. 2d 244 (C.A. 9th), certiorari denied, 296 U.S. 633. In addition, in the Tax Court the taxpayers must overcome the presumption arising in favor of the Commissioner's determination that the value of the certificate is face. Here the Commissioner's presumption was not overcome. The balance sheet of the Co-op shows that the assets behind the certificates covered them at face. The 6 percent interest provided on the certificates was very attractive and there was no indication that the Co-op had ever defaulted on any interest payments. The record shows that the Co-op periodically redeemed the oldest outstanding certificates without delay. (R. 33-34.) The Co-op was known in the community to be in sound financial condition and well-managed and from the transfers of certificates reported on the Co-op's books in 1944 and 1945 (R. 34), it seems apparent that such certificates had a market value. Furthermore, it does not appear that these certificates were transferred at less than face value. Therefore, it seems clear that the Tax Court's decision on this point is not unreasonable, but is based on substantial evidence. *Mistrot v. Commissioner*, 84 F. 2d 545 (C.A. 5th).

We submit that the Tax Court did not err in this finding and that the ultimate decision is correct.

## CONCLUSION

The decision of the Tax Court should be affirmed.

Respectfully submitted,

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MARCH, 1953.



## Internal Revenue Code:

## SEC. 22. GROSS INCOME.

(a) [As amended by Sec. 1, Public Salary Tax Act of 1939, c. 59, 53 Stat. 574] *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. \* \* \*

\*            \*            \*            \*            \*

(26 U.S.C. 1946 ed., Sec. 22.)

SEC. 42. [As amended by Sec. 114, Revenue Act of 1941, c. 412, 55 Stat. 687]. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

(a) *General Rule.*—The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period.

\* \* \*

\*            \*            \*            \*            \*

(26 U.S.C. 1946 ed., Sec. 42.)

SEC. 111. DETERMINATION OF AMOUNT OF, AND RECOGNITION OF, GAIN OR LOSS.

\* \* \* \* \*

(b) *Amount Realized*.—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

\* \* \* \* \*

(26 U.S.C. 1946 ed., Sec. 111.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22(a)-7. *Gross Income of Farmers*.—A farmer reporting on the basis of receipts and disbursements (in which no inventory to determine profits is used) shall include in his gross income for the taxable year (1) the amount of cash or the value of merchandise or other property received during the taxable year from the sale of live stock and produce which were raised during the taxable year or prior years, (2) the profits from the sale of any live stock or other items which were purchased, and (3) gross income from all other sources. \* \* \*

\* \* \* \* \*

SEC. 29.111-1. *Computation of Gain or Loss*.—Except as otherwise provided, the Internal Revenue Code regards as income or as loss sustained, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value

of any property which is received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. \* \* \*

\* \* \* \* \*

